IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

EPT RECORDS LLC, a Texas limited-liability company, Plaintiff, vs. **BUILDTOOLS, INC.**, a Minnesota Corporation, Defendant.	Civil Case No. ____________________ **JURY TRIAL DEMANDED**

COMPLAINT FOR PATENT INFRINGEMENT

For its Complaint against Defendant Buildtools, Inc. ("Defendant"), Plaintiff EPT Records LLC ("EPT") hereby alleges as follows.

JURISDICTION AND VENUE

1. This is an action including for infringement under the patent laws of the United States, 35 U.S.C. § 101, *et. seq*. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

2. This Court has personal jurisdiction over Defendant because it regularly conducts business in Texas and in this District, where it has committed the infringing acts alleged herein.

3. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b)-(c) and 1400.

PARTIES

4. Plaintiff EPT is a Texas limited-liability company having a principal place of business at 5068 W. Plano Parkway, Suite 300, Plano TX 75093.

5. On information and belief, Defendant is a Minnesota corporation, having a principal place of business at 153 Lake Street E, Wayzata, MN 55301.

COUNT I—INFRINGEMENT OF U.S. PATENT NO. 8,145,533

6. Plaintiff EPT re-alleges and incorporates by reference paragraphs 1-5 above, as if fully set forth herein.

7. EPT is the owner by assignment of U.S. Patent No. 8,145,533 ("the '533 patent"), which is entitled "Builders On-Line Assistant," which duly and lawfully issued on March 27, 2012. A true and correct copy of the '553 patent is attached hereto as Exhibit A.

8. The claims of the '533 patent are directed to, for example, an "apparatus for servicing a customer of a building contractor through a third-party website provider," and Claim 11, for example, recites elements including, *inter alia*, (a) "a contract term

establishment processor establishing terms of a contract between the customer and the building contractor to build or rehabilitate real estate for the customer at a building site of the real estate, said contract forming a pre-existing contract;" (b) "a first website provided by the third-party website provider, said website providing product, service or installation service options of product, service or installation service offerings available from the building contractor for installation at the building site into the building or rehabilitation of the real estate by the building contractor for the customer under the pre-existing contract;" (c) "a second website associated with the first website provided by the third-party website provider for entry of information related to the customer by the building contractor;" (d) "a selection processor receiving from the customer through the first website a selection of an option of the options provided by the building contractor associated with the pre-existing contract;" and (e) "a contract term change processor for altering the term of the preexisting contract based on said product, service or installation options selected by the customer."

9. The '533 patent covers the methods and systems claimed, and protects EPT's exclusive right to sell its methods and systems without infringement by competitors or their products. With EPT's covered methods and systems, a third-party website enables servicing a customer of a builder, including multiple interfacing steps that bring information to a customer based on dynamic requirements. These methods and

systems were not routine or conventional, particularly at the time of the claimed inventions in 2000 and 2001.

10. On information and belief, Defendant has made, used, offered for sale, sold and/or imported into the United States systems and/or methods covered by the claims of the '533 patent, and continues to do so; for example, the Defendant's cloud-based construction management software functionality (*see* Exhibit B) employs the method covered by Claim 11 of the '533 patent.

11. First, Defendant's software includes "a contract term establishment processor establishing terms of a contract between the customer and the building contractor to build or rehabilitate real estate for the customer at a building site of the real estate, said contract forming a pre-existing contract," as exemplified by the functionality disclosed in Exhibit B, including specifically as shown at the second page.

12. Second, Defendant's software includes "a first website provided by the third-party website provider, said website providing product, service or installation service options of product, service or installation service offerings available from the building contractor for installation at the building site into the building or rehabilitation of the real estate by the building contractor for the customer under the pre-existing contract," as exemplified by the functionality disclosed in Exhibit B, including specifically as shown at the third and fourth pages.

13. Third, Defendant's software includes "a second website associated with the first website provided by the third-party website provider for entry of information related to the customer by the building contractor," as exemplified by the functionality disclosed in Exhibit B, including specifically as shown at the fifth page.

14. Fourth, Defendant's software includes "a selection processor receiving from the customer through the first website a selection of an option of the options provided by the building contractor associated with the pre-existing contract," as exemplified by the functionality disclosed in Exhibit B, including specifically as shown at the sixth page.

15. Fifth, Defendant's software includes "a contract term change processor for altering the term of the preexisting contract based on said product, service or installation options selected by the customer," as exemplified by the functionality disclosed in Exhibit B, including specifically as shown at the seventh page.

16. On information and belief, Defendant has caused, encouraged and aided others, including customers, to directly infringe the '533 patent having full knowledge of the '533 patent and the specific intent that its acts and the acts of its customers and/or others to directly and/or indirectly infringe the '533 patent.

17. By the acts of making, using, offering to sell, selling and/or importing the accused infringing systems and/or methods, Defendant has directly infringed the '533 patent under 35 U.S.C. § 271(a).

18. By the acts of actively inducing others to infringe the ‘533 patent, Defendant has infringed the ‘533 patent under 35 U.S.C. § 271(b). On information and belief, having knowledge of the ‘533 patent, Defendant specifically intended for its customers to infringe the ‘533 patent by using and/or re-selling the accused infringing systems and/or methods.

19. The acts of infringement asserted herein have been and continue to be deliberate and willful, at least since Defendant first learned about the ‘533 patent.

20. Defendant has derived and received gains, profits and advantages from the aforesaid acts of infringement, and EPT has lost profits and has otherwise been damaged and is entitled to monetary relief in an amount to be determined at trial.

21. The infringement of the ‘533 patent has caused and continues to cause irreparable harm to EPT, for which there is no adequate remedy at law, and the infringement will continue unless and until it is enjoined by this Court.

PRAYER FOR RELIEF

Therefore, Plaintiff EPT prays for the following relief:

A. A determination that Defendant has infringed the ‘533 patent under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents;

B. A preliminary and permanent injunction against the continuing patent infringement;

C. An accounting for damages adequate to compensate for the patent infringement under 35 U.S.C. § 284, including Plaintiff's actual damages including lost profits, treble damages, pre-judgment and post-judgment interest, and costs;

D. A determination of willful patent infringement, and that this is an exceptional case, and an award of reasonable attorney fees and expenses to Plaintiff under 35 U.S.C. § 285; and

E. Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands hereby a jury trial on any issues triable of right by a jury.

Dated: April 12, 2017

Respectfully submitted,

/s/ Stephen M. Lobbin

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